



The new ACAS code of practice on disciplinary and grievance procedures

Introduction

Following a review of employment dispute resolution practices, the Department for Business Enterprise & Regulatory Reform (“BERR”) has concluded that the Statutory Dispute Resolution Procedures (“the Old Procedures”) which were introduced in October 2004 have not succeeded in reducing the number of Employment Tribunal disputes. As a result of this, a decision has been taken to repeal the legislation which introduced the Old Procedures and replace it with a new regime based upon the ACAS Code of Practice on Disciplinary and Grievance Procedures (“the Code”) which comes into effect on Monday 6th April 2009.

Unlike the Old Procedures, the Code is not legally binding and as a result of which, a failure to follow its provisions will not immediately result in a penalty. Employers are however advised to ensure that they comply with the provisions of the Code at all times given that its content will be taken into account by Employment Tribunals when assessing cases.

General principles of fairness

The introduction to the Code states that in attempting to handle disciplinary and grievance procedures fairly (and hence in accordance with the Code) parties should have regard to the following general principles:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act **consistently**.
- Employers should carry out any necessary **investigations**, to establish the facts of the case.
- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.

- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.
- Employers should allow an employee to **appeal** against any formal decision made.

Handling Disciplinary Issues

The Code refers to a series of headings which are intended to provide guidance to employers so they are able to handle disciplinary and dismissal situations fairly, namely:-

- Establish the facts of each case
- Inform the employee of the problem
- Hold a meeting with the employee to discuss the problem
- Allow the employee to be accompanied at the next meeting
- Decide on appropriate action
- Provide employees with an opportunity to appeal

Handling Grievance Procedures

As with disciplinary situations, the Code provides advice about how grievances should be handled fairly and contains the following headings:-

- Let the employer know the nature of the grievance
- Hold a meeting with the employee to discuss the grievance
- Allow the employee to be accompanied at the meeting
- Decide on appropriate action
- Allow the employee to take the grievance further if not resolved.

What rules/principles will cease to apply?

- Employees will no longer be required to raise a grievance in order to bring a claim in the Employment Tribunals.
- There will no longer be a distinction between the old “standard” and “modified” grievance procedures.
- The complicated rules relating to extensions of time where employees raise a formal grievance will no longer apply.
- An employer’s failure to address an employee’s grievance will no longer result in automatic unfairness.

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Adjustment to awards

Under the Old Procedures the Employment Tribunal was under a duty to consider increasing or reducing any award of damages by between 10 to 50% to reflect a party's non-compliance. Under the Code, the maximum adjustment which a Tribunal can make to an award is limited to 25%.

Mediation

The Code attempts to encourage parties to embrace the concept of alternative dispute resolution through mediation. It informs employers that they are entitled to adopt a process of mediation through either internal or external sources in an effort to avoid the need for disputes to be resolved at an Employment Tribunal. There is no obligation however to mediate and the Code does indicate that in some cases it will be inappropriate.

Transitional Provisions

Whilst the Code will come into force on Monday 6th April 2009, the Old Procedures will continue to apply in certain circumstances.

In the case of a dismissal the Old Procedures will apply where an employer has sent a step 1 letter, held a step 2 meeting or dismissed an employee before 6th April 2009. Where possible therefore, employers are advised to avoid taking any steps until after 6th April 2009.

In the case of grievance procedures the Old Procedures will apply to any grievance where the action the employee complains about took place on or before 5th April 2009 or where an employee has submitted a written grievance or Tribunal claim on or before 4th July 2009 in respect of claims with a 3 month limitation period or 4th October 2009 in respect of claims with a 6 month limitation period.

Conclusion

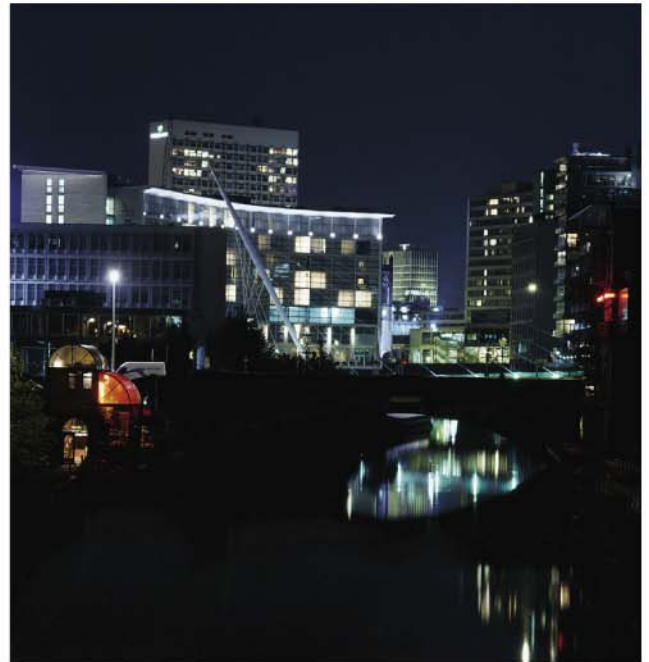
The complete repeal of legislation by a Government is a very unusual event and as a result of which, it would appear the Government acknowledges the Statutory Dispute Resolution Procedures were a failure. Whilst it is likely parties will continue to litigate over the provisions of the Code this will be nothing like on the previous scale which employers have had to contend with.

If you would like to receive more information regarding the contents of this newsletter or information on any other employment law related matters then please contact **Russell Brown** at Glaisyers Solicitors LLP, One St James's Square, Manchester M2 6DN. Tel: 0161 832 4666; Fax: 0161 832 1981; Email: rwb@glaisyers.com

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